



CITY OF SANTA BARBARA

ATTACHMENT 7

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: June 10, 2014

TO: Ordinance Committee

FROM: Ariel Pierre Calonne, City Attorney

SUBJECT: State Street Sidewalk Behavior And Panhandling Ordinances

RECOMMENDATION: That the Ordinance Committee:

- A. Review certain proposed changes to the State Street Sitting and Lying Down Ordinance and the Abusive Panhandling Ordinance; and
- B. Consider enacting an ordinance to prohibit public urination and defecation.

DISCUSSION:

Background

On April 22, 2014, the City Council voted unanimously (6-0, Francisco absent) to refer to the Ordinance Committee for further consideration and review issues raised in a memorandum from Councilmembers Hotchkiss and Rowse. (See April 3, 2014 Memorandum included as Attachment 1.) The memorandum raises the possibility of taking the following specific actions:

- Expanding the 7:00 a.m. to 9:00 p.m. hours of the current Sit/Lie prohibition
- Adding a prohibition on sitting, standing or lying down upon any planting, railing or statue placed or installed on a public sidewalk
- Expanding the "active" panhandling prohibition near ATM's from 25 feet to 80 feet, subject to constitutional analysis by the City Attorney
- Expanding the "active" panhandling prohibition to other areas where there are captive audiences, such as busses and other public transportation vehicles
- Prohibiting urinating or defecating in public

The relevant existing Santa Barbara Municipal Code excerpts are included as Attachment 2 to this report.

The Council memorandum also suggested directing the City Attorney to undertake research and report back to the Ordinance Committee on the legal feasibility of adding to the municipal code the following considerations:

- A prohibition on groups of people congregating in a manner that blocks the free movement of pedestrian traffic on our downtown sidewalks
- A prohibition on the use of public benches and street furniture for the storage, sale or display of merchandise or personal items
- A prohibition on active panhandling within a prescribed distance of a queue of persons waiting to gain admission to a place of business and outdoor dining areas

The Ordinance Committee should give direction on which of the above-referenced ideas it wishes to have researched further. The Ordinance Committee may also wish to add other suggestions after hearing from the public. The City Attorney will prepare draft ordinance amendments in conjunction with the research.

Legal Framework

The Council may generally enact reasonable time, place and manner restrictions upon constitutionally protected speech (such as begging for alms or panhandling), provided that the regulations are content-neutral, narrowly drawn, necessary to further a significant government interest, and allow for ample alternative channels for communication.

Content neutrality is critical. Accordingly, objections to panhandling or panhandlers may not be used to justify regulations:

“The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

Again, there must be “no evidence that the city adopted the ordinance because of a disagreement with the message” *Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1044 (9th Cir. 2002).

Regulations must also be narrowly drawn or “tailored.” However, the courts are clear that:

“‘Narrow tailoring’ does not require the government to adopt the ‘least restrictive or least intrusive means of serving the statutory goal’ when the regulation does not completely foreclose any means of communication. The requirement that the regulation be ‘narrowly tailored’ will be met ‘so long as the . . . regulation promotes a substantial government interest that

would be achieved less effectively absent the regulation' and the regulation is not 'substantially broader than necessary to achieve the government's interest.'" *Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1045 (9th Cir. 2002), citations omitted.

It is important that the Ordinance Committee consider and describe the significant governmental interests it wishes to further so that the regulations can be appropriately tailored to meet Santa Barbara's needs. The City has a significant governmental interest, for example, in traffic congestion, public safety, avoiding visual clutter, and crowd control. As the United States Supreme Court has put it:

"Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement." *Cox v. State of La.*, 379 U.S. 536, 554-55 (1965).

Ample alternative channels of communication must also be left open. This means that it will be necessary to do relatively precise mapping of the City's downtown core areas in order to determine whether expanded "place" regulations – like expanding the ATM panhandling prohibition from 25 to 80 feet – leave open ample alternative channels for communication.

With respect to sitting and lying down regulations, Eighth Amendment cruel and unusual punishment concerns may arise when insufficient shelter space is available and an ordinance criminalizes behavior such as sitting, lying, or sleeping at night while being involuntarily homeless. The Ordinance Committee should be cautious to take these concerns into account as it seeks legal guidance on potential ordinance expansion or other changes.

Next Steps

The Ordinance Committee direction will be used by the City Attorney to conduct detailed research into the legal feasibility of the various proposals. This will include downtown mapping prepared with the assistance of the Public Works and Community Development Departments. The City Attorney will report back to the Ordinance Committee with a comprehensive legal analysis and draft ordinance amendments.

ATTACHMENT(S): 1. April 3, 2014, memorandum from Councilmembers Hotchkiss and Rowse
2. Santa Barbara Municipal Code excerpts

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APPROVED BY: City Administrator's Office